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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,924	12/19/2001	Francis Emmerson	367.40944X00	8863

20457 7590 05/16/2003

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EXAMINER

CAPRON, AARON J

ART UNIT PAPER NUMBER

3714

DATE MAILED: 05/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

M.K

<b>Office Action Summary</b>	Application No.		Applicant(s)	
	10/020,924		EMMERSON ET AL.	
	Examiner		Art Unit	
	Aaron J. Capron		3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 December 2001.
- 2a) ☐ This action is FINAL.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All   b) ☐ Some \*   c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |                                                                                                              |                                                                             |
|--------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

The Preliminary Amendment filed on December 19, 2001, with respect to the changes in the specification was not entered due to the improper marked-up form and lack of a clean copy of the specification. With respect to the changes in the abstract and claims, the Preliminary Amendment was entered.

### ***Information Disclosure Statement***

The examiner's consideration under MPEP 609 of the non-English language references cited on submitted Information Disclosure Statement is limited to the extent described for the cited non-English documents and any corresponding translations therein only so far as the particular portion respectively translated and without reference to a complete invention thereof. It is further noted that the translations are not attested as to their accuracy.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Referring to claims 1-6, there is insufficient antecedent basis for the limitation "the middle phone." Claims 2-6 are rejected based upon their dependency on independent claim 1.

Referring to claim 7, there is insufficient antecedent basis for the limitation “the games content.”

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 6-16 are rejected under 35 U.S.C. 102(b) as being anticipated by LaDue (U.S. Patent No. 5,999,808).

Referring to claim 1, LaDue discloses a method of modifying game content of a mobile phone, the game content comprising gaming parameters, the method comprising sending one or more gaming parameters from the mobile phone to a server, at the server applying training data to the one or more selected gaming parameters to provide a modified parameter set in which one or more of the parameters is modified, sending the modified parameter set to the mobile phone and modifying the games content using the modified parameter set (abstract, 6:66-7:30 and 11:4-8).

Referring to claim 2, LaDue discloses training data comprises an algorithm (CDMA technology).

Referring to claim 6, LaDue discloses the sending of gaming parameters and modified gaming parameters are by wireless transmission of signals.

Claims 7-8 correspond in scope to a method and a client-server system set forth for use of the method listed in the claims above and are encompassed by use as set forth in the rejection above.

Claims 9-12 correspond in scope to a gaming device set forth for use of the method listed in the claims above and are encompassed by use as set forth in the rejection above. Each of the mobile devices having an identifier (20:54-56).

Referring to claim 13, LaDue discloses that the gaming parameters and the modified gaming parameters are transmitted by signals through wired networks (Figure 1B).

Claims 14-16 correspond in scope to a computer program product on a terminal/server and a method set forth for use of the method listed in claims above and are encompassed by use as set forth in the rejection above.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaDue.

Referring to claims 3-5, LaDue discloses the user having the ability to play video games on the mobile phone (abstract), but does not disclose that the player can alter the characters, team or create a team for use in the game. However, it is notoriously well known at the time of the invention that video games include the ability to alter a character or team and to create a team for

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use in a game in order to add variety to the game. In sports game, a player has the opportunity to act as a general manager to control the trades and free agents of the team in order to make the best team possible. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the feature of altering characters and/or teams in order to add variety to the game for the player.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron J. Capron whose telephone number is (703) 305-3520. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on (703) 308-1806. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

ajc  
May 13, 2003



MARK SAGER  
PRIMARY EXAMINER